

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2291 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DINESHBHAI BABUBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MS SUMAN PAHWA for Petitioner

MR. H.H. PATEL, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/12/1999

ORAL JUDGEMENT

The petitioner - detenu came to be detained on 18.3.1999 by virtue of an order passed by the District Magistrate, Valsad, in exercise of power under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

2. In the grounds of detention, the detaining authority took into consideration six offences registered

against the petitioner with Valsad City Police Station under the Bombay Prohibition Act. On the basis of these registered offences, the authority came to the conclusion that the petitioner is a bootlegger. His activities are detrimental to the public order and he is required to be detained under the PASA Act to immediately prevent him from pursuing his illegal and anti social activities.

3. The petitioner challenges the detention mainly on the ground of delay in passing the order of detention.

4. Ms. Suman G. Pahwa, learned advocate appearing for the petitioner has drawn attention of this court to the grounds raised in the petition. She submitted that the detaining authority has taken into consideration only the registered offences against the petitioner. Last such offence was registered on 17.1.1999 and the order of detention came to be passed on 18.3.1999. She submitted that there is a delay of about two months in passing of the above order. The subjective satisfaction arrived at by the detaining authority that the petitioner is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal activities cannot be said to be genuine and therefore the petition may be allowed.

5. Mr. H.H. Patel, learned A.G.P. has opposed this petition.

6. What transpires is that the order of detention is passed only on consideration of registered offences against the petitioner. The last such offence is dated 17.1.1999. The order of detention is passed on 18.3.1999 i.e. after two months. There is no allegation of any illegal activity being carried on by the detenu during this period. The authorities' subjective satisfaction for immediate need of detaining the detenu therefore cannot be accepted as genuine and therefore the detention would stand vitiated. If there was really need to immediately prevent the petitioner from pursuing his illegal activities and it was necessary to resort to detention under the PASA Act vis-a-vis the proceeding under ordinary law, the orders could and should have been passed much earlier. The lapse of two months and absence of any allegation of illegal activities on the part of the detenu would indicate that the subjective satisfaction arrived at by the detaining authority cannot be said to be genuine. The causal connection can be said to have snapped. This would vitiate the detention and the petition therefore deserves to be allowed.

7. The petition is therefore allowed. The order of detention dated 18.3.1999 detaining Shri Dineshbhai Babubhai Patel passed by the District Magistrate, Valsad, is quashed and set aside. The detenu Shri Dineshbhai Babubhai Patel be set at liberty forthwith if not required in any other case. Rule is made absolute. No order as to costs.

(A.L. DAVE, J)

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